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**OFFICE OF PETITIONS**

In re Application of	:	
Werner Haug	:	DECISION ON PETITION TO
Application Number: 10/009680	:	WITHDRAW HOLDING OF
Filing Date: 10/20/2001	:	ABANDONMENT
Attorney Docket Number: FE-	:	
15PCT	:	

This is a decision on the petition filed on October 20, 2008, to withdraw the holding of abandonment in the above-identified application.

A Notice of Abandonment was mailed on October 7, 2008, stating that the application was abandoned for failure to response to the final Office action mailed on March 24, 2008

Petitioner asserts that a timely and proper response to the final Office action was filed, in the form of an amendment after final and Notice of Appeal.

A review of the record reveals that on March 24, 2008, a final Office action was mailed, setting a three (3) month shortened statutory period for reply. On September 29, 2008 (certificate of mailing September 24, 2008), petitioner filed an amendment after final rejection and a Notice of Appeal were filed, accompanied by authorization to charge a three (3) month extension of time to counsel's deposit account. The extension of time fee has been charged to counsel's deposit account.

At the outset, the amendment after final rejection filed on September 29, 2008, has been found not to place the application in condition for allowance. A copy of the Advisory Action Before the Filing of an Appeal Brief is attached to this decision.

Nevertheless, as a Notice of Appeal and fee were also filed on September 29, 2008, petitioners have established that they submitted a timely and proper reply to the final Office action in the form of a Notice of Appeal and a three (3)-month extension of time on September 29, 2008 (certificate of mailing date September 24, 2008). **Therefore, the Office reminds applicant that the two (2)-month extendable period to file an appeal brief in compliance with 37 CFR 41.37, accompanied by the fee required by law, began to run on September 29, 2008, the date of filing the Notice of Appeal.** The Office notes that "37 CFR 41.37(a) does not permit the brief to be filed within the time allowed for reply to the action from which the appeal was taken even if such time is later." *MPEP* 1205. "Once appellant timely files a notice of appeal in compliance with 37 CFR 41.31, the time period for reply set forth in the last Office action is tolled and is no longer relevant for the time period for filing an appeal brief." *Id.* **Therefore, applicant is required to submit an appeal brief on or before April 29, 2009, accompanied by a request for an extension of time for response within the fifth month and fee to avoid abandonment of this application.** In other words, applicant, himself, started the running of the two-month extendable period to file an appeal brief based upon the date applicant originally submitted the Notice of Appeal with the USPTO.

The petition is **granted** to the extent indicate above.

The holding of abandonment is withdrawn and the application is restored to pending status.

This matter is being referred to Technology Center Art Unit 3628 to await the filing of an appeal brief within the period noted above.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D Wood".

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Cf: Advisory Action Before the Filing of an Appeal Brief